

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
COLUMBIA-WEST MATERIALS)
AND CONSTRUCTORS, INC.,)

Appellant,)

v.)

SOUTHWEST AIR)
POLLUTION CONTROL)
AUTHORITY,)

Respondent.)

PCHB No. 79-128

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of two \$250 civil penalties for two
alleged violations of Section 4.02 of respondent's Regulation I and
WAC 173-400-040 having come on regularly for formal hearing on the
30th day of November, 1979 in Vancouver, Washington, and appellant,
Columbia-West Materials and Constructors, Inc., appearing through its
construction superintendent, Virgil Barnett and respondent, Southwest
Air Pollution Control Authority, appearing through its attorney, James
D. Ladley with Nancy E. Curington, hearing examiner presiding, and the
Board having considered the exhibits, records and files herein, and

1 having reviewed the Proposed Order of the presiding officer mailed to
2 the parties on the 14th day of December, 1979, and more than twenty
3 days having elapsed from said service; and

4 The Board having received no exceptions to said Proposed Order and
5 the Board being fully advised in the premises; NOW THEREFORE,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
7 Order containing Findings of Fact, Conclusions of Law and Order dated
8 the 14th day of December, 1979, and incorporated by reference herein
9 and attached hereto as Exhibit A, are adopted and hereby entered as
10 the Board's Final Findings of Fact, Conclusions of Law and Order
11 herein.

12 DATED this 30th day of January, 1980.

13 POLLUTION CONTROL HEARINGS BOARD

14
15 *Nat W. Washington*
16 NAT W. WASHINGTON, Chairman

17 *Chris Smith*
18 CHRIS SMITH, Member

19 *David Akana*
20 DAVID AKANA, Member

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STATE OF WASHINGTON

IN THE MATTER OF)
COLUMBIA-WEST MATERIALS)
AND CONSTRUCTORS, INC.,)
Appellant,)
v.)
SOUTHWEST AIR POLLUTION)
CONTROL AUTHORITY,)
Respondent.)

PCHB No. 79-128

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of two \$250 civil penalties for two alleged violations of Section 4.02 of respondent's Regulation I and of WAC 173-400-040, came before the Pollution Control Hearings Board in Vancouver, Washington, on November 30, 1979. Nancy E. Curington, Administrator, presided.

Appellant appeared through Virgil Barnett, construction superintendent. Respondent was represented by its attorney, James D. Ladley.

EXHIBIT A

1 Having heard the testimony, having examined the exhibits and
2 having considered the contentions of the parties, the Board makes
3 these

4 FINDINGS OF FACT

5 I

6 Pursuant to RCW 43.21B.260, respondent has filed with the Board
7 a certified copy of its Regulations and amendments thereto, which
8 are noticed.

9 II

10 On July 9, 1979, respondent's inspector observed emissions from
11 appellant's plant from two sources, the top of the scale hopper
12 infeed elevator and the top of the surge silo. The two separate
13 plumes were approximately 20-50 feet apart at the source; the plumes
14 did not commingle.

15 III

16 Respondent's inspector observed the plume from the scale hopper
17 infeed elevator for 16 minutes, between 12:38 p.m. and 12:53 p.m.,
18 and measured it at more than 30% opacity for the full 16 minutes.
19 The inspector read the plume from the surge silo at the same time,
20 obtaining a reading of more than 30% opacity for 16 minutes.

21 IV

22 After reading the two plumes, respondent's inspector issued two
23 field notices of violation of WAC 173-400, for excessive visible
24 emissions from the top of the scale hopper infeed elevator (No.
25 3340) and from the top of the surge silo (No. 4291). On July 20,
26 1979, respondent sent the appellant, by certified mail, two notices

27 PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 of violation and civil penalty of \$250 each, totalling \$500. .

2 V

3 Immediately after the emissions were brought to the appellant's
4 attention, the appellant's employees examined the equipment for
5 possible causes. A burn hole was found in a pipe in the scale
6 hopper infeed elevator; such was repaired upon discovery. The
7 employees could find no problems with the surge silo equipment.
8 Appellant has always been cooperative with respondent regarding any
9 air pollution problems.

10 VI

11 Section 4.02 of respondent's Regulation I prohibits any person
12 from causing or allowing the emission of air contaminants of such
opacity as to obscure an observer's view equal to or greater than
14 smoke shade No. 2 of the Ringelmann Chart as published by the U.S.
15 Bureau of Mines, for more than three minutes in any hour. Where the
16 emissions occur temporarily because of breakdown of equipment which
17 is promptly repaired, the regulations provide that no violation has
18 occurred.

19 WAC 173-400-040 prohibits any person from causing or allowing an
20 emission for more than three minutes in any one hour of an air
21 contaminant from any source which at the emission point exceeds 20%
22 opacity.

23 V

24 Any Conclusion of Law which should be deemed a Finding of Fact
25 is hereby adopted as such.

26 From these Findings the Board comes to these

27 PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

CONCLUSIONS OF LAW

I

Appellant violated both Section 4.02 of respondent's Regulation I and WAC 173-400-040 by causing emissions from the surge silo and the top of the scale hopper infeed elevator in excess of 20% opacity for more than three minutes in one hour, from two sources. Consequently, the two Notices of Violation were properly issued.

II

It appears that the emissions from the scale hopper infeed elevator, causing issuance of field notice of violation No. 3340, was caused by a burn hole in a pipe in the assembly. Although the problem was promptly remedied, the burn hole, which could have been avoided by preventative maintenance, does not constitute a "temporary breakdown" which would be excused under the respondent's regulations.¹.

III

The two civil penalties of \$250 each, totalling \$500, should be affirmed.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Pollution Control Hearings Board enters this


1. See the discussion of "unavoidable and unforeseeable failure or breakdown" in Bethlehem Steel Corp. v. PSAPCA, PCHB No. 775.

ORDER

The two \$250 civil penalties, totalling \$500, for causing emissions in violation of respondent's Regulation and WAC 173-400 are affirmed.

DATED this 14th day of December, 1979.

POLLUTION CONTROL HEARINGS BOARD


NANCY E. CURINGTON, Administrator

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER